King Broadcasting Company *and* American Federation of Television and Radio Artists (Seattle Local), AFL–CIO. Case 19–CA–24264

September 9, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

On March 14, 1997, Administrative Law Judge David G. Heilbrun issued the attached decision. The Respondent filed exceptions and a supporting brief, and the Charging Party filed an answering brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order as modified.[2]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, King Broadcasting Company, Seattle, Washington, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

Substitute the following for paragraphs 2(c) and (d).

''(c) Within 14 days after service by the Region, post at its facility in Seattle, Washington, copies of the attached notice marked ''Appendix.''[14] Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 10, 1996.

''(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.''

James C. Sand, Esq., for the General Counsel.
Russell L. Perisho, Esq. (Perkins Coie), of Seattle, Washington, for the Respondent.
Anthony Hazapis, Esq., of Seattle, Washington, for the Charging Party.

DECISION

STATEMENT OF THE CASE

DAVID G. HEILBRUN, Administrative Law Judge. This case was tried in Seattle, Washington, on May 3, 1996. The charge was filed on January 10, 1996, by the American Federation of Television and Radio Artists (Seattle Local), AFL–CIO (AFTRA or the Union). The complaint issued February 21, 1996. The complaint alleges that King Broadcasting Company (King or the Respondent) refused a request made by AFTRA for copies of certain individual employment agreements executed by King and individual union members in violation of Section 8(a)(1) and (5) of the National Labor Relations Act (the Act).

The parties have been afforded full opportunity to appear, to introduce relevant evidence, to examine and cross-examine witnesses, and to file posthearing briefs.

On the entire record, including my observation of the demeanor of the witnesses, and after careful consideration of the briefs filed by the General Counsel and the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

King Broadcasting Company, a corporation, operates a television broadcasting station at its facility in Seattle, Washington, where it annually purchases and receives goods and materials valued in excess of $50,000 directly from sources outside the State of Washington, or from suppliers within the State which in turn obtained such goods and materials from sources outside Washington. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and, as is also admitted, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Issues*

The issues raised by the pleadings are first, whether the complaint must be dismissed as untimely under Section 10(b) of the Act because the Union had received actual or constructive notice of the Respondent's refusal to provide individual employment agreements, commonly referred to as ''Personal Service Contracts'' (PSCs), as early as January 1995, more than 6 months before a charge was filed with the NLRB.

Second, if the charge was not untimely, whether the Union's request for PSCs covered information presumptively relevant to the Union's role as bargaining representative.

Third, if the charge was not untimely and the requested information was presumptively relevant, whether the Union

[1] In light of our agreement with the judge's finding, based on Board precedent, that the Respondent did not establish that confidentiality of the contents of Personal Service Contracts (PSCs) was warranted, we find no merit in the Respondent's argument that the judge should have ordered bargaining over the means of protecting the confidentiality of the contents of the PSCs.

[2] We shall modify the judge's recommended Order in accordance with our decision in *Indian Hills Care Center*, 321 NLRB 144 (1996).

waived its right to request PSCs either by contract or through its conduct.

Finally, if the charge was not untimely, the requested information was presumptively relevant, and the Union did not waive its right to request PSCs, whether King has shown legitimate and substantial confidentiality interests that outweigh the Union's need for the requested information.

B. *General Facts*

King and the Union have been parties to successive collective-bargaining agreements covering announcers, singers, actors, dancers, or other talent since at least 1967. During this time,[1] each collective-bargaining agreement has designated the Union as the exclusive bargaining agent for unit employees with respect to wages, rates of pay, hours of work, and other conditions of employment. King has been permitted to enter into PSCs with individual employees, so long as the terms of the PSC are more favorable for the employee than the terms of the collective-bargaining agreement. The most recent collective-bargaining agreement provides, in pertinent part as article III,(a):

> FAVORABLE TERMS/PERSONAL SERVICES CONTRACTS: The Company agrees that the minimum terms and conditions governing employment of employees covered by this Agreement are those contained in this Agreement, and the Company agrees that it will not enter into any contract with or employ any such employees upon terms and conditions less favorable to the employees than those set forth in this Agreement. The Company further agrees for the benefit of AFTRA and all employees covered by this Agreement, that existing contracts or agreements with all such employees are hereby modified in accordance herewith, but no terms, wages, or hours under such existing contracts or agreements now had by any such employees which are more favorable to such employees than the terms herein specified, shall be deemed as modified by this contract. Nothing contained in this Agreement shall limit the right of any employee covered by this Agreement to negotiate terms more favorable than those set forth herein.

The collective-bargaining agreement, as further contract language of article III,(a), treats the followup to execution of a PSC by this separate paragraph:

> Notices of individual agreements executed between the Company and any artist covered hereunder shall be filed with AFTRA no less than ten days prior to the effective date of any such individual agreement; and the same shall apply to any amendments, whether written or oral. However, money amounts above the minimum may be indicated by the word ''overscale.''

The language permitting King to utilize PSCs has not changed significantly during the bargaining relationship. Until 1973, the collective-bargaining agreement explicitly provided: ''[c]opies of [PSCs] shall be available for inspection by a paid official of AFTRA, provided such inspection be made on the Company premises. However, money amounts above the minimum may be indicated by the word 'Overscale' and the term thereof, original or renewal, may be omitted.'' No witness could explain why this language was absent from collective-bargaining agreements entered into beginning in 1973.

On January 4, 1995,[2] John Sandifer, the acting executive director of the Union, sent a letter to King's news director, Andy Beers, making two requests. After explaining that he had seen some new employees on the air, Sandifer requested notifications for any new PSCs executed by King and copies of the actual PSCs themselves. Since he was new to his office, Sandifer was not familiar with how King used PSCs. An archived letter written by his predecessor, Anthony Hazapis, raised a question as to whether King might be using PSCs to circumvent its obligations under the collective-bargaining agreement. The letter to Beers was intended to remind King of its ordinary duty to provide timely notification of new PSCs and obtain copies of recent PSCs to ensure that King was abiding by the collective-bargaining agreement.

King's director of human resources since April 1992, Jack Quinlin, responded to Sandifer's request by letter of January 6. Quinlin reminded Sandifer that access to PSCs had been discussed the previous year during contract negotiations with the Union and summarized King's current position: ''We have *never* provided copies of [PSCs] to the Union and do not intend to start doing so at this time. We will agree to advise you as to which employees have [PSCs]'' (emphasis in letter).[3] During a negotiation with Quinlin concerning another unit on January 11, Sandifer raised the issue of access to PSCs. Quinlin agreed to provide Sandifer with the ''boilerplate'' language ordinarily used in a PSC and did so shortly thereafter.

On February 7, Sandifer wrote Quinlin with the Union's specific and detailed concerns about the boilerplate language. Sandifer's primary purpose in writing the letter was to inform Quinlin that though he was ''in no way relinquishing AFTRA's right to inspect individual agreements . . . [the] receipt of the 'standard language' meets my current needs.'' Subsequently, Sandifer did not file a grievance as a result of Quinlin's January 6 letter.

Sandifer and Quinlin had only one occasion to discuss access to PSCs over the next few months. At a meeting on March 29 concerning another unit, Sandifer brought up his letter of February 7 and Quinlin agreed to provide a copy of the letter to King's corporate legal staff. Quinlin did not communicate again with Sandifer until August 8, when he sent a copy of a new PSC boilerplate that King's corporate parent intended to introduce at all of its broadcast stations. Quinlin expressed King's view that the new boilerplate would resolve the Union's concerns and was consistent with all provisions in the collective-bargaining agreement. Sandifer responded by letter of August 15, warning that unilateral implementation of the new PSC boilerplate language would invite a grievance. Sandifer also promised to share the Union's response after reviewing the new language with a union committee.

[1] The collective-bargaining agreement in effect from 1979 to 1982 was not included in the record.

[2] All dates are from 1995 unless otherwise indicated.

[3] Quinlin testified that the notification requirement had been ignored in recent years by both King and the Union. This testimony was not rebutted.

On August 22, Sandifer wrote Quinlin requesting the PSCs of Scott Miller and Lisa Papas, ''[i]n connection with my study of KING Individual Agreements, and in order for me to adequately represent members of the bargaining unit.'' In fact, the Union already possessed copies of both PSCs which had been supplied by the employees several months earlier. Papas had come to the Union with a question about her overtime compensation in late March. Miller had requested help negotiating a new PSC with King in April. At the time of his request, Sandifer believed that a grievance would be filed concerning a conflict between the overtime compensation provided in Papas' PSC and the terms of the collective-bargaining agreement. Sandifer did not want King to know that Papas had sought out the Union's assistance. By including a request for another employee's PSC, Sandifer hoped to make it appear that the Union had approached Papas. Even though Miller had deleted compensation information from his PSC before giving it to the Union, Sandifer acknowledged that he had enough information to assist Miller in his negotiations. Sandifer waited until August to request the PSCs because he had hoped to reach agreement with King over the language of the PSCs, which would possibly have rendered Papas' potential grievance moot.

Quinlin denied Sandifer's request for PSCs by letter of August 30, reasserting King's position that the collective-bargaining agreement only requires notices of new PSCs and an indication of whether they are overscale. Quinlin also explained that King did not want confidential information leaked to competitors, many of whom had employees also represented by the Union.[4]

Sandifer met Quinlin for lunch on September 7, primarily to discuss issues affecting other units. Quinlin agreed to discuss the Union's concerns with the boilerplate language but suggested that the Union narrow their objections to two or three key issues. Sandifer wrote Quinlin on September 12, stating that he was unable to narrow down the Union's concerns and included a copy of the old PSC boilerplate with the objectionable provisions struck or rewritten. Sandifer also informed that he would renew his request for PSCs shortly.

By letter of September 18, Sandifer repeated his request for PSCs of Papas and Miller. He also added a request for ''any other individual agreements that may have been arrived at since the Miller agreement was signed.'' At this time, Sandifer still believed that a grievance would be filed on behalf of Papas and wondered whether Miller had entered into a new agreement. By requesting the most recent PSCs, Sandifer expected to see whether the new boilerplate language had been implemented. Sandifer responded to King's concerns over confidentiality by promising that the contents of the PSCs would be kept confidential and not shared with officers of the local or members of the Union's board of directors.

Quinlin denied Sandifer's renewed request on October 4, restating King's position that its obligation extended only to providing the Union with notification of new PSCs and indications of overscale amounts. In addition, Quinlin stated that the Union had expressly waived any right to information beyond notification and that this position was supported by King's consistent practice of not providing PSCs to the Union.

At the hearing, neither Sandifer nor Quinlin offered much illumination on the parties' prior negotiations and practices concerning PSCs. The evidence allows for some reconstruction of past events. In the Union's files, Sandifer also found a letter dated May 20, 1991, from Hazapis to Joseph Duffy, identified in the address as King's vice president for employee relations. Hazapis thanked Duffy ''for sending me copies of the several personal services agreements that have been executed between King Broadcasting and AFTRA members in the news unit.'' In the same file folder as the letter were copies of PSCs of a form in use prior to the 1991 negotiations and with information pertaining to compensation, dates, and names redacted from each PSC in a similar fashion. Although they were not physically attached to the letter, Sandifer believed that they came from the same source—and not from individual employees—given their immediate proximity to the letter and the common manner in which information had been redacted. I find that these PSCs were provided by King to the Union in 1991.[5] The record is silent as to whether these PSCs were supplied pursuant to a request by the Union or on King's initiative.

On September 11, 1991, King and the Union temporarily resolved their differences over the form of PSCs then being used. Responding to union objections to boilerplate language in the PSC, King agreed in a side letter to the 1991 collective-bargaining agreement to use a ''revised form'' PSC in individual negotiations with unit employees. This side letter was also incorporated into the current collective-bargaining agreement but does not address issues of access to PSCs.

By at least 1993, the understanding over PSCs shared by King and the Union had deteriorated. Before making his request for PSCs of new employees in January, Sandifer had found a letter dated May 2, 1993, from Hazapis, to Bob Jordan, King's news director at that time. In this letter, Hazapis expressed the Union's concern over the unilateral implementation of a new ''short form'' PSC by King. Sandifer did not know whether this letter had received a response when he made his January request. Some months later, Sandifer found the response in his files: a letter of May 28, 1993. In this letter, Jordan told Hazapis that the new PSC form was in accordance with the collective-bargaining agreement. Sandifer did not know whether the Union had accepted Jordan's invitation to correct him if his assumption was wrong. Again, neither Hazapis' letter of May 2, 1993, nor Jordan's reply of May 28, 1993, address the issue of access to PSCs.

During negotiations for a new collective-bargaining agreement in 1994, Quinlin proposed eliminating the paragraph

[4] On cross-examination, Sandifer testified that the Union's attorney, Hal Green, also represented individual talent in negotiations with King's competitors. King's specific concerns over the possibility that Green might compromise the confidentiality of the PSCs were not raised with the Union before the hearing.

[5] To the extent that this finding is inconsistent with Quinlin's position that it has never been King's policy to provide individual PSCs to the Union, there is no dispute that King has asserted absolute confidentiality during Quinlin's tenure as director of human resources. Quinlin credibly testified that he was unaware of the 1991 letter when he first denied Sandifer's request for PSCs. It is not clear when Sandifer discovered the 1991 letter and PSCs, but no evidence suggests that he brought this letter to Quinlin's attention. As Quinlin became director of human resources in April 1992, it is not surprising that he was unaware of the 1991 letter and may be unfamiliar with King's prior practice regarding PSCs.

obligating King to provide the Union with notification of new PSCs. Quinlin believed that both King and the Union had effectively forgotten this provision and preferred that it be deleted if it served no purpose. Hazapis objected, and the language remained in the collective-bargaining agreement. When Hazapis expressed the Union's interest in viewing PSCs, Quinlin suggested the Union be permitted to request individual PSCs directly from employees. After Hazapis indicated that this was not adequate, Quinlin told him that King would not give PSCs to the Union and was willing to take the matter to arbitration.[6] No agreement was reached on whether the Union would be allowed to see copies of PSCs in King's possession.

Since October 4, King has not provided any PSCs to the Union. Quinlin testified at the hearing that the new PSC boilerplate has not been implemented within the bargaining unit. There is no evidence suggesting that the Union knew this with certainty before the hearing.

C. *Contentions*

The General Counsel contends that its complaint was timely filed under Section 10(b) of the Act. The Union's charge was made on January 10, 1996, less than 6 months after King denied Sandifer's request for the PSCs of Papas and Miller on August 30. Further, PSCs are presumptively relevant as they pertain to the wages, hours, and working conditions of bargaining unit employees. The Union did not clearly and explicitly waive its right to see PSCs in the collective-bargaining agreement. Finally, the Respondent has failed to overcome its burden of demonstrating that its interest in absolute confidentiality outweighs the Union's need for the PSCs.

The Respondent contends that the complaint must be dismissed as untimely under Section 10(b) of the Act. The Union had actual notice of King's refusal to provide PSCs as early as January 6, when Quinlin denied Sandifer's request for PSCs of new hires. Moreover, PSCs are not presumptively relevant, because they contain information not directly related to the Union's bargaining role and the Union failed to adequately demonstrate a compelling need for the requested documents. Even if the Union would otherwise be entitled to see the PSCs, it waived its rights in the collective-bargaining agreement. Whatever relevance the Union may have established, its need for the PSCs is greatly outweighed by King's confidentiality interests which would be irreparably compromised if full disclosure is required.

D. *Credibility*

Sandifer impressed me as a forthright and honest witness. Cumming's notes on the 1994 negotiation sessions appear to be an accurate reflection of her impressions at that time, if not a perfectly objective memorialization of what was said there. I am persuaded from the limited observation of Quinlin's demeanor that he was inclined to slant his testimony slightly to favor the Respondent's interests. He did not hesitate to assert boldly that it has never been King's policy to provide PSCs, even though he had been director of human resources for only 4 years. Similarly, his testimony concerning the 1994 negotiations tends to overstate the Union's representations. This is easily corrected by reference to Cumming's notes. Aside from his tendency to inject his memory with his interpretation of the events, Quinlin did not appear to be withholding facts or attempting to mislead willfully. I decline to credit his testimony where contradicted by Sandifer or by Cumming's notes. Although I cannot credit Quinlin's testimony that it has never been King's policy to provide the Union with copies of PSCs, I view his statement to be a reflection of his understanding of the policy and appreciate that his relatively brief tenure at King limits his faculty to testify accurately as to King's practice before 1992. This does not detract from Quinlin's reliability on other points.

E. *Analysis*

1. Timeliness under Section 10(b) of the Act

In its answer and posthearing brief, the Respondent raises as an affirmative defense the Union's failure to file a charge within 6 months of its knowledge of King's refusal to provide PSCs. The Respondent argues that the Union had actual notice of King's conduct constituting the alleged unfair labor practice in January 1995 when Quinlin denied Sandifer's request for PSCs of new hires.

Section 10(b) of the Act provides, in pertinent part, ''[t]hat no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board.'' As the charge was filed on January 10, 1996, any alleged unfair labor practice must have occurred on or after July 10, 1995, to be timely under Section 10(b).

The 10(b) period begins to run when the act giving rise to the unlawful conduct is known to the aggrieved party. *Comcraft, Inc*., 317 NLRB 550 (1995). Identifying the event that triggers the 10(b) period is complicated in cases such as this one, where conduct similar to that alleged to be an unfair labor practice also occurs more than 6 months prior to the time the charge is filed. In *Machinists Local 1424 v. NLRB*, 362 U.S. 411 (1960), the Supreme Court provided guidance for distinguishing events occurring before the 10(b) period commences from those falling within the 6-month period. Where ''occurrences within the 6-month limitations period in and of themselves may constitute, as a substantive matter, unfair labor practices . . . earlier events may be utilized to shed light on the true character of matters occurring within the limitations period'' *Machinists Local 1424*, supra at 416. However, where conduct ''occurring within the limitations period can be charged to be an unfair labor practice *only* through reliance on an earlier unfair labor practice . . . use of the earlier unfair labor practice is not merely 'evidentiary,' [and] a complaint based upon that earlier event is time-barred.'' *Machinists Local 1424*, supra at 417 (emphasis added). The Court enlarged on its fundamental rationale by holding further that ''a finding of violation'' is directly at odds with the purposes of the 10(b) provision when it is ''in-

[6] In his January 6 letter to Sandifer and, at the hearing, Quinlin recalled that Hazapis had represented at the negotiations that he would not ask for ''all'' PSCs. The Respondent introduced notes compiled after the sessions by Patty Cumming, a member of the King negotiating team. In her notes, Cumming characterized Hazapis' position as being that the Union ''would only exercise [its right to see PSCs] if they had some obvious overriding need to see the personal services contracts.''

escapably grounded'' on events predating the limitations period. *Machinists Local 1424*, supra at 422.

Clearly, King's refusal on January 6 to provide the Union with PSCs of new hires falls outside the 10(b) period. King's refusals on August 30 and October 4 to provide the Union with PSCs of Miller, Papas, and employees who signed PSCs subsequent to Miller fall within the 10(b) period. The Respondent argues that the Union had actual knowledge of King's refusal to provide any PSC on January 6, and cannot salvage its unfair labor practice charge from the effect of Section 10(b) by merely repeating a request it knows to be futile. I agree with the General Counsel that the requests of January 4 and August 22 were separate and distinct, made for different purposes and covering different material. Thus, King's refusals of August 30 and October 4 ''in and of themselves may constitute'' unfair labor practices, and its refusal of January 6 does not trigger the 10(b) period.

On January 4, the Union fancifully requested only the PSCs for new hires, those seen by Sandifer on King's broadcasts. Quinlin's refusal to provide these PSCs on January 6 used language more sweeping than necessary given the narrow scope of the Union's request. Sandifer's letter of January 4 had two purposes: (1) to friendlily remind King of its contractual obligation to provide notification of new PSCs, and (2) to acquire a copy of any PSC that ''appear[ed]'' to have been recently executed.[7] Contextually Sandifer had not included all other PSCs in the Union's request. Quinlin was not, therefore, in a position to refuse to provide PSCs of employees other than those of new hires. Seen in this light, the sweeping language used by Quinlin in his letter of January 6 was a refusal to provide the PSCs specifically requested by the Union on January 4, and an anticipatory refusal of union requests for PSCs in the future.

This in turn triggered several months of ambiguous dealings and ''mixed signals'' about the Respondent's true intentions in regard to use of PSCs in the context of their fundamental authorization and needed legitimacy under section III,(a). The 10(b) period will not commence with the mere threat of an unfair labor practice. See, e.g., *Industrial Power*, 321 NLRB 816 (1996). Cf. *Leach Corp.*, 312 NLRB 990, 991 (1993), enfd. 54 F.3d 802 (D.C. Cir. 1995). On the contrary, it is settled that a party raising the affirmative defense of Section 10(b) has the burden of showing that notice of an unfair labor practice, whether such notice is actual or constructive, must be clear and unequivocal. *Oliver Insulating Co.*, 309 NLRB 725, 726 (1992); *Service Employees Local 3036 (Linden Maintenance)*, 280 NLRB 995, 996 (1986). Notably, the parties had preserved their respective positions relative to article III,(a), and the question of whether a narrow or broad view of favorableness was permitted when PSC terms were weighed against the labor agreement itself. Cf. *3 State Contractors*, 306 NLRB 711, 715–716 (1992).

The Union made two requests for PSCs subsequent to January 4; namely, on August 22 and September 18. Each of these requests was separate from its earlier request for the PSCs of new hires. These requests covered different employees,[8] were prompted by different motivations, and could not have been anticipated at the time of the January request.

On August 22, Sandifer requested Papas' PSC in preparation for a grievance. Even though he already possessed a copy of her PSC, Sandifer wanted to conceal from King that Papas had approached the Union for help. He requested Miller's PSC to make his request for Papas' PSC less conspicuous. Thus, these two PSCs were requested to satisfy a need that arose after King's refusal to provide the PSCs of new hires on January 6.

On September 18, Sandifer repeated his request for the PSCs of Papas and Miller and added a request for all PSCs entered subsequent to Miller's. This additional request followed notice by King of its intent to introduce a new form PSC on August 8. Sandifer made the additional request to monitor whether King had unilaterally implemented a new form PSC in possible violation of the collective-bargaining agreement.[9] The need for this request could not have been anticipated before the Union had been given notice that King planned to change the PSC format.

Faced with a comparable situation, the Board has rejected an employer's argument that Section 10(b) barred all requests for PSCs made following an initial unchallenged refusal. In *WXRK*, 300 NLRB 633 (1990), an employer argued that a complaint alleging an unlawful failure to provide a union with copies of PSCs was barred under Section 10(b) where the employer had refused an earlier request for a specific PSC before the 10(b) period commenced. *Sagittarius Broadcasting*, supra at 636. The Board affirmed the administrative law judge's conclusion that the later request was the determinative event for 10(b) purposes since the request was made after the Union had received additional information that the employer might not be complying with the collective-bargaining agreement. Here, the Union received information that suggested King might not be abiding by the terms of the collective-bargaining agreement pertaining to overtime compensation and to the standard PSC. This information was not available when King refused to provide PSCs for new hires on January 6.

Respondent's countering argument on this issue relies on *United Slate, Tile & Composition Roofers*, 202 NLRB 851 (1973). This is unavailing because there limitations of Section 10(b) existed where a mere ''reaffirmation'' of earlier, time barred conduct was presented by the case.

For the foregoing reasons, I find that the General Counsel's complaint is not barred by Section 10(b).

2. Presumptively relevant

Respondent argues that even if the charge was timely filed, the requested PSCs are not directly related to the Union's role as bargaining agent and that the Union has

[7] Although Sandifer had specifically requested PSCs of new hires, his need to see those PSCs was obviated when Quinlin provided the boilerplate PSC then in use.

[8] Neither Miller nor Papas was alleged to have been new hires in January.

[9] Side letter 2 to the 1994 agreement includes a relevant provision:

> The Company has listened to the objections made by the Union about certain aspects of the ''boilerplate'' contract terms. We have made some changes in the contract form in response to those objections.
>
> Generally, the Company will use the revised form in all AFTRA talent negotiations, subject to the Company's need to make adjustments for individual circumstances and to respond to the proposals made by the talent in the individual negotiations.

failed to demonstrate relevance with sufficient precision. To the contrary, I find that the PSCs must be presumed relevant as they clearly contain information about wages, hours, and terms of employment.

''Information pertaining to the wages, hours and working conditions of employees in the bargaining unit is so intrinsic to the core of the employer-employee relationship that it is considered presumptively relevant.'' *Proctor & Gamble Mfg. Co. v. NLRB*, 603 F.2d 1310, 1315 (8th Cir. 1979). Using the PSCs of Miller and Papas as representative examples, all PSCs routinely specify salary rates and other compensation, overtime rates and provisions relating to termination. The fact that the Union does not participate in bargaining for overscale compensation does not diminish the relevance of PSCs. See, e.g., *WCCO Radio, Inc*., 282 NLRB 1199, 1204–1005 (1987), enfd. 844 F.2d 511 (8th Cir. 1988).

Where the information requested by a union is presumptively relevant, and the employer refuses to provide the information, the employer bears the burden to demonstrate a lack of relevance or to provide adequate reasons why the information cannot be supplied. *WCCO*, supra at 1204. In drafting the Union's requests for PSCs, Sandifer was not required to demonstrate their precise relevancy. He did, however, articulate his purposes for the Union's requests; to monitor King's use of PSCs and ''to adequately represent members of the bargaining unit.'' In *WCCO*, supra at 1204. the Board found a Union's request for PSCs to have two proper purposes: ''the preparation of bargaining demands and the administration of its existing contract.''

King has failed to demonstrate why the PSCs requested by the Union are any less relevant. Whether the Respondent is correct that the requested PSCs cannot assist the Union in any potential grievance does not affect a relevancy analysis. In passing on an information request the Board, is not concerned with the merits of the grievance, thus it need not speculate as to what use a Union will make of the requested information. *Pennsylvania Power Co*., 301 NLRB 1104, 1005 (1991).

The Board has also rejected arguments that an employer should not have to provide requested information contained on ''minimum term contracts,'' even if presumptively relevant, that is otherwise available directly from union members. *Radio Station WLOL*, 181 NLRB 560, 562 (1970). Thus, the fact that the Union already possessed copies of Miller's and Papas' PSCs when it made its request is immaterial for purposes of relevancy. the Respondent has failed to meet its burden of showing why the Union's request is not relevant to its bargaining role.

3. Waiver of right to PSCs

Respondent contends that even if the charge was timely filed and the PSCs were relevant to the Union's role as bargaining agent, the Union waived its right to see the PSCs in the collective-bargaining agreement. Because the contractual language pointed to by the Respondent in support of its contention does not clearly and unambiguously relinquish the Union's right to access PSCs, I find that the Union did not waive its right.

''[T]he Board will not infer a waiver of a statutory right unless the waiver is 'clear and unmistakable.' *Ohio Power Co*., 317 NLRB 135, 136 (1995), quoting *Metropolitan Edison Co. v. NLRB*, 460 U.S. 693, 708 (1983). There are three ways in which a union may waive a statutory right: ''by express provision in the collective-bargaining agreement, by conduct of the parties (including past practices, bargaining history, and action or inaction), or by a combination of the two.'' *E-Systems, Inc*., 318 NLRB 1009, 1012 (1995), quoting *Chesapeake & Potomac Telephone Co. v. NLRB*, 687 F.2d 633, 636 (2d Cir. 1982). The the Respondent bears a ''weighty burden'' of demonstrating how AFTRA clearly and unmistakably waived its right to seek PSCs. *NLRB v. New York Telephone Co*., 930 F.2d 1009, 1011 (2d Cir. 1991).

The Union did not expressly waive its right to request PSCs in the language of the collective-bargaining agreement. The relevant provision expressly provides only that King must provide notification of new PSCs with overscale amounts so marked. In its brief, the Respondent argues that by this provision, ''the parties are impliedly stating that other information, including the contents of the confidential documents, need not be provided.'' Even if such an implication could be drawn from the provision,[10] it fails to rise to a clear and unmistakable waiver of the Union's right. Silence in the collective-bargaining agreement on the issue of whether PSCs shall be provided to the Union will not constitute a clear and unmistakable waiver. See *Oil Workers Local 6–418 v. NLRB*, 711 F.2d 348, 354 fn. 8 (D.C. Cir. 1983).

Neither does an examination of the parties' bargaining history on access to PSCs reveal a clear and unmistakable waiver of the Union's right. ''Waiver of [statutory] rights may be evidenced by bargaining history, but only if the matter at issue has been fully discussed and consciously explored during negotiations and the union has consciously yielded or clearly and unmistakably yielded its interest in the matter.'' *Ohio Power Co*., supra at 136. Accord: *Reece Corp*., 294 NLRB 448, 451 (1989).

From 1967 through 1973, the parties expressly provided that redacted PSCs would be available for inspection by the Union on King's premises. Neither party has attempted to explain why this provision disappeared in subsequent collective-bargaining agreements. King and the Union disagree sharply on what may be inferred from the removal of this provision. King argues that the removal of this provision shows that the parties mutually agreed to eliminate the Union's authorization to access PSCs. Rather, I find that the removal of this provision lifted a limitation that had earlier been placed on the Union's right to obtain information presumptively relevant to its role as bargaining agent. The removal of a restriction on a right does not constitute a clear and unmistakable waiver of that right.

Nothing in the parties' negotiations for the current collective-bargaining agreement suggests that the Union consciously yielded its position on access to PSCs. Quinlin's testimony and Cumming's notes from the negotiation sessions reveal otherwise. They show that Hazapis and Quinlin disagreed about whether King would be obliged to satisfy a union request for PSCs under the existing language of the collective-bargaining agreement. Hazapis only broached the issue of access to PSCs in explaining why he was opposed to eliminating the notification requirement. His response to

[10] It is more plausible that the notification is intended to alert the Union to the existence of a PSC without disseminating salary information unless requested by the Union.

Quinlin's proposal strongly suggests that he believed the Union already possessed such a right and explains why he did not advance a proposal that a right of access to PSCs be memorialized in the collective-bargaining agreement.[11] Hazapis made clear to Quinlin that the Union did not agree with or accede to King's position regarding access to PSCs. I find that the Union did not waive its right to see copies of the requested PSCs.

4. King's need for confidentiality

Respondent argues that even if the Union's charge is timely, the requested information is presumptively relevant, and the Union has not waived its right of access to PSCs, King's substantial claims of confidentiality justify its refusal to give copies of the requested PSCs to the Union. This case presents none of the unusual circumstances that the Board has elsewhere found to warrant such a refusal.

Only in exceptional circumstances will an employer's confidentiality interests predominate over a union's interest in relevant information:

> [I]n dealing with union requests for relevant, but assertedly confidential information, the Board is required to balance a union's need for the information against any ''legitimate and substantial'' confidentiality interests established by the employer. The appropriate accommodation necessarily depends on the particular circumstances of each case. The party asserting confidentiality has the burden of proof. Legitimate and substantial confidentiality and privacy claims will be upheld, but blanket claims of confidentiality will not. Further, a party refusing to supply information on confidentiality grounds has a duty to seek an accommodation. Thus, when a union is entitled to information concerning which an employer can legitimately claim a partial confidentiality interest, the employer must bargain toward an accommodation between the union's information needs and the employer's justified interests. [*Pennsylvania Power Co*., supra at 1105–1106 (citations and footnotes omitted).]

The Board has additionally noted that there are only a ''few general categories'' of confidential information. These are:

> [T]hat which would reveal, contrary to promises or reasonable expectations, highly personal information, such as individual medical records or psychological test results; that which would reveal substantial proprietary information, such as trade secrets; that which could reasonably be expected to lead to harassment or retaliation, such as the identity of witnesses; and that which is traditionally privileged, such as memoranda prepared for pending lawsuits. [*Detroit Newspaper Agency*, 317 NLRB 1071, 1073 (1995).]

Respondent claims that if the confidentiality of PSCs were compromised, other local television stations would gain a competitive advantage. In support of its position, the Respondent cites *Dallas & Mavis Forwarding Co*., 291 NLRB 980 (1988), enfd. 909 F.2d 1484 (6th Cir. 1990), where the Board found that a delay in providing requested information was justified to the extent that the employer's confidentiality interests outweighed a union's need for information. The employer in *Dallas & Mavis* feared that competitors might gain an advantage if they acquired information about tariff rates contained in certain business contracts. However, exceptional circumstances not present in the instant case warranted a divergence from the Board's normal Rule that relevant information be provided at a union's request. The employer demonstrated that confidential information revealed to union members in the past had fallen into the hands of competitors. *Dallas & Mavis*, supra at 984. No similar showing has been made by King. The union in *Dallas & Mavis* had requested that copies of the tariff rates be supplied to all members in a group of truckdrivers—even though only a small percentage of the 20,000 tariffs in use affected union members—and made no assurances of confidentiality for 3 months following its request. *Dallas & Mavis*, supra at 984. Sandifer has requested only single copies of specific PSCs and has offered not to share them with employees or agents who might compromise their confidentiality with King's competitors. Finally, the Board only found justified the employer's delay in providing the requested tariffs until the union focused its request and made assurances that it would preserve confidentiality. *Dallas & Mavis*, supra at 984. Because the employer in *Dallas & Mavis* subsequently provided the requested information, the Board was not required to determine whether an outright refusal in similar circumstances would have been justified.

King has failed to demonstrate why confidentiality is warranted in this case. In *WCCO Radio*, supra at 1206. the Board rejected an argument nearly identical to King's, that information contained on PSCs are in the nature of a trade secret. This argument made little sense in light of the fact that competitors could easily obtain the contents of King's PSCs merely by asking the employees they were attempting to hire away. See also *Evening News Assn*., 270 NLRB 380, 381–382 (1984). The Board in *WCCO Radio* also identified a long line of cases rejecting other confidentiality arguments concerning individual employment agreements. In both *Boston Herald-Traveler Corp*., 102 NLRB 627, 635 (1954), enfd. 210 F.2d 134 (1st Cir. 1953), and *Boston Herald-Traveler Corp*., 110 NLRB 2097, 2099–2100 (1954), enfd. 223 F.2d 58 (1st Cir. 1955), the Board rejected an employer's argument that the earnings of each unit employee should remain confidential because disclosure of wages would embarrass employees and assist competitor newspapers in luring away star columnists and reporters. The Board has also found speculative and conjectural an employer's contention that disclosure of salaries contained on PSCs would foment jealousy among unit employees. *KCMO Broadcasting*, 145 NLRB 550, 553 (1963).

The fact that the Union's attorney also represents individual talent in negotiations with King's competitors does not, in itself, demonstrate a compelling need for King to maintain the absolute confidentiality of PSCs. Rather, the absence of a showing that actual harm has occurred from the attorney's involvement in negotiations with King's competitors shows

[11] The zipper clause cited by the Respondent as an additional waiver of the Union's right does not resolve the present dispute in King's favor. The Union does not seek to renegotiate a term of the collective-bargaining agreement, but rather seeks to enforce a right it never relinquished.

that the Respondent's concerns are unwarranted. See *WXRK*, supra at 636.

There is no evidence that King has offered to accommodate the Union's request. This is in spite of King's apparent past practice, memorialized in the collective-bargaining agreements through 1973, of allowing the Union to review PSCs with compensation above the minimum redacted and designated as overscale. Copies of PSCs with compensation, dates, and names redacted were also provided to the Union by King in 1991. Though King's decision to not offer to accommodate the Union's needs makes it unnecessary for me to decide whether a similar offer would have been an adequate response to the Union's requests, this past practice strongly suggests that a reasonable accommodation could have been made. Since the Respondent has made no attempt to accommodate the Union's needs and has failed to show why its interest in absolute confidentiality outweighs the Union's need for the requested information, I shall order the Respondent to satisfy the Union's requests. See *WXRK*, supra at 637.

CONCLUSIONS OF LAW

1. King Broadcasting Company (King) is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The American Federation of Television and Radio Artists (Seattle Local), AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. The following employees of the Respondent constitute a unit appropriate for the purposes of collective-bargaining within the meaning of Section 9(b) of the Act:

> All employees of King Broadcasting Company (KING-TV) engaged to ender services as announcers, singers, actors, dancers, or other category of talent, both staff and freelance, excluding technicians, guards and supervisors as defined in the National Labor Relations Act, office workers and persons employed by the Company as operational coordinators for engineering duties and concurrent off-camera station breaks and announcements, including station sign on and sign off. Instrumental musicians (except when speaking or singing) and combination men (operational crew chiefs), transmitter or studio engineers, or other employees within the KING-TV contract coverage of Local 46 of the International Brotherhood of Electrical Workers are also excluded.

4. By failing and refusing to provide PSCs requested by the Union on August 22 and September 18, 1995, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

This affirmative action shall include providing the Union with copies of the PSCs of Scott Miller, Lisa Papas, and all PSCs executed subsequent to Miller's and on or before October 4, 1995. I shall also recommend that the Respondent post an appropriate notice to all employees.

Disposition[12]

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[13]

ORDER

The Respondent, King Broadcasting Company, Seattle, Washington, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with American Federation of Television and Radio Artists (Seattle Local), AFL–CIO by failing and refusing to furnish it with the personal service contracts of unit employees in the appropriate unit found above.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Provide the Union with allowably redacted personal service contracts of employees Scott Miller and Lisa Papas, and any personal service contracts executed subsequent to Miller's and on or before October 4, 1995.

(b) On request, bargain collectively with the Union by furnishing to it the personal service contracts of unit employees.

---

[12] A pending motion for consolidation of cases and for reopening of hearing was filed by the General Counsel on November 26, 1996. It sought consolidation of Case 19–CA–24651, in which complaint had issued on November 21, 1996, and a reopening of this case as the medium for further overall litigation. The motion was based on the General Counsel's assertions that one driving issue of Case 19–CA–24651 is ''identical'' to issues here (taken collectively), and the other two new issues are ''very closely related.'' Briefly stated, these last two assertedly ''very closely related'' issues concern (1) alleged ''direct dealing'' by the employer with talent on a PSC over terms of his employment severance, and (2) wheher the Respondent could decline to recognize AFTRA as the person's representative in filing a grievance over his termination based on an individual severance agreement. Both parties filed statements of position during December 1996, with the Respondent opposing and the General Counsel advocating the motion. The respective arguments were further enlarged on via a conference call. After due consideration, I do not believe the General Counsel's threshold rationale for consolidation is persuasive. Case 19–CA–24651 portends development of subtle and extensive labor-management dynamics far beyond the largely static factors of contract language, existence of PSCs, and spirited written tiltings that framed an institutionally rooted dispute. On this basis I now deny the motion for consolidation of cases and for reopening of hearing in its entirety. Cf. *Postal Service*, 263 NLRB 357, 366–367 (1982).

[13] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(c) Post at its facility in Seattle, Washington, copies of the attached notice marked ''Appendix.''[14] Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the the Respondent's authorized representative, shall be posted by the the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the the Respondent has taken to comply.

[14] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain collectively with American Federation of Television and Radio Artists (Seattle Local), AFL–CIO by failing and refusing to furnish the Union with the individual employment agreements (personal service contracts) of employees in our bargaining unit:

> All employees of King Broadcasting Company (KING-TV) engaged to render services as announcers, singers, actors, dancers, or other category of talent, both staff and freelance, excluding technicians, guards and supervisors as defined in the National Labor Relations Act, office workers and persons employed by the Company as operational coordinators for engineering duties and concurrent off-camera station breaks and announcements, including station sign on and sign off. Instrumental musicians (except when speaking or singing) and combination men (operational crew chiefs), transmitter or studio engineers, or other employees within the KING-TV contract coverage of Local 46 of the International Brotherhood of Electrical Workers are also excluded.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL promptly furnish AFTRA with PSCs of Scott Miller, Lisa Papas, and other persons working under PSCs executed subsequent to that of Scott Miller and on or before October 4, 1995, this for the purpose of AFTRA making its determination of compliance with article III,(a) of the minimum basic agreement now or recently in effect between the parties.

KING BROADCASTING COMPANY